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Supreme Court of the United States

OCTOBER TERM, 1968

No. 933

CLAUDE L. KOHLER, DAVID L. BURNES and RENE S. WOGAN, individually and as citizens, taxpayers and voters of the State of Louisiana, for themselves and all other persons similarly situated and the PENNISTON-GENERAL TAYLOR ASSOCIATION and the UP-TOWN CIVIC ASSOCIATION

versus

A. P. TUGWELL, individually and as Treasurer of the State of Louisiana, NEVILLE LEVY, individually and as Chairman of the Mississippi River Bridge Authority and/or the Greater New Orleans Mississippi River Bridge Authority and ARSENE L. STEWART, individually and as Director of the Department of Highways for the State of Louisiana and JOHN J. McKEITHEN, individually and as Governor of the State of Louisiana, and their successors in office

Appeal from the United States District Court for the Eastern District of Louisiana sitting as a three-judge court, case No. 68-253

JURISDICTIONAL STATEMENT

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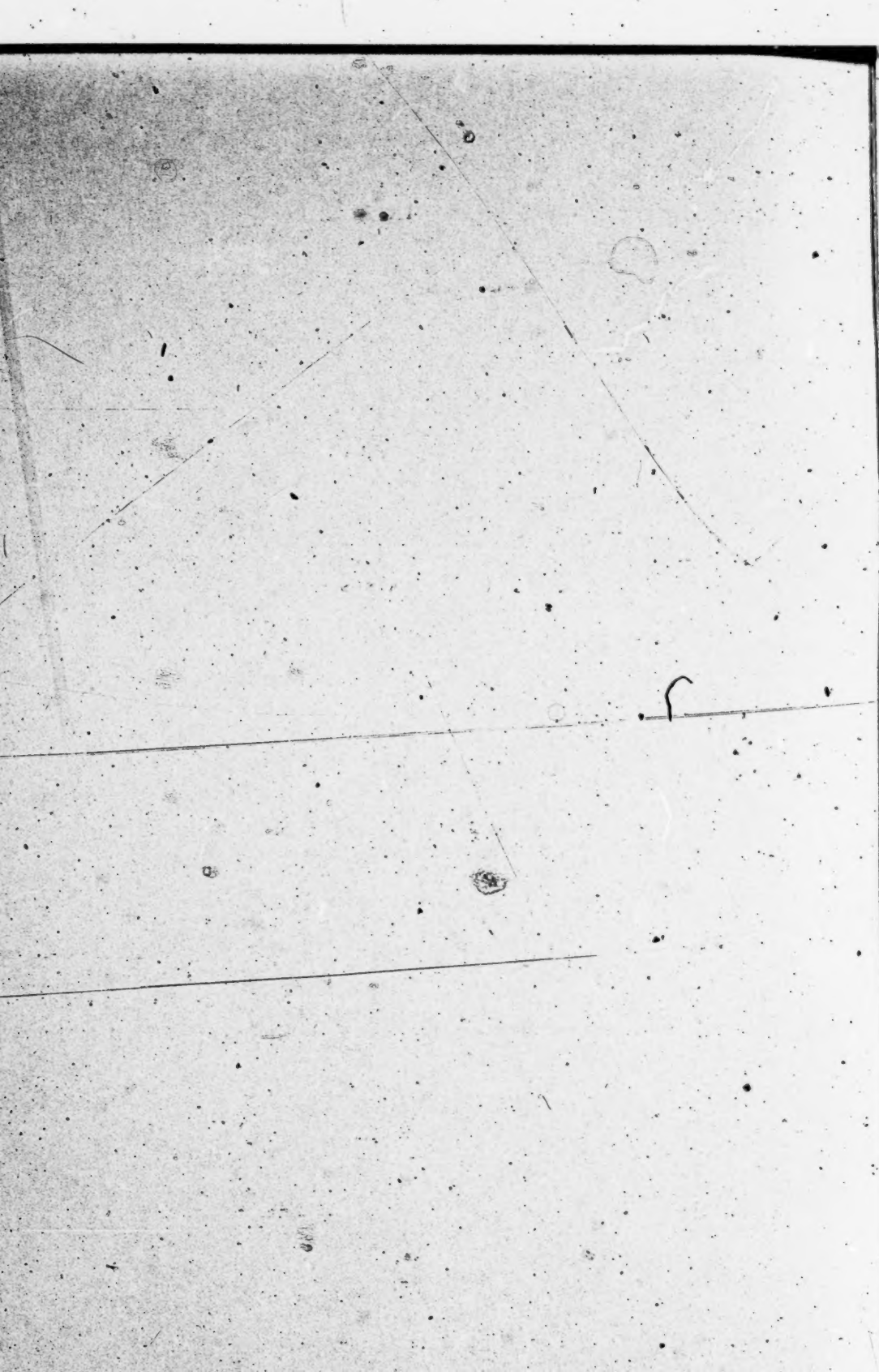

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Louisiana delivered by a three-judge court is appended hereto as *Appendix A.*

JURISDICTIONAL GROUNDS

This is a class action by citizens and taxpayers of the State of Louisiana seeking an injunction against the State Treasurer, the Chairman of the Mississippi River Bridge Authority, the Director of the Louisiana State Department of Highways and the governor of that state, enjoining those public officials from spending or committing tax funds or the issuance of bonds or taking similar fiscal actions to construct a Mississippi River Bridge crossing at New Orleans under color of authority of an amendment to Article VI, Section 22, (G) (4) of the constitution of the State of Louisiana which was voted upon by the electors of that state on November 8, 1966. The factual grounds of the suit are that the description of the amendment appearing on the ballot was misleading and deceptive and did mislead and deceive the voters of the state resulting in an apparent passage of the amendment which in its full text was unintelligible. This suit below was brought in the United States District Court for the Eastern District of Louisiana and thereafter a three-judge court was requested and granted pursuant to 28 U.S.C.A. Section 2281-2284. The matter was tried by the three-judge court on August 5, 1968 at New Orleans, Louisiana.

On October 24, 1968 the three-judge court rendered an opinion contrary to the appellants position and dismissing the appellants' suit. Judgment based on this opinion was entered on the 28 day of October, 1968. On November 13, 1968 notice of appeal was filed in the United States District Court for the Eastern District of Louisiana, New Orleans Division.

STATUTE CONFERRING JURISDICTION UPON THIS COURT

This appeal is lodged in this court pursuant to 28 U.S.C.A. 1253, *Appendix B.*

A decision by a three-judge court is appealable to the Supreme Court as a matter of right. *Radio Corp. of America vs. U.S.* (D.C. Ill., 1950) 95 F. Supp. 660 affirmed 71 S.Ct. 806, 341 U.S. 412, 95 L.Ed. 1062. The fact that a three-judge court has been convened and has rendered the decision from which appeal is sought does not in and of itself foreclose an exception to this statute. The statute as construed by this court is applicable only if the respective actions were "required" to be heard and determined by a district court of three judges. These requirements include that the plaintiffs must seek to enjoin a state statute of general and statewide application. In addition the officer or officers sought to be enjoined must be state officers in the performance of their functions. *Moody v. Flowers,* 87 S.Ct. 1544, 387 U.S. 97.

In order to carry out the provisions of the constitutional amendment under attack here concerted action

of the state treasurer, an elected official, the director of the Department of Highways for the State of Louisiana, the governor and the Mississippi River Bridge Authority would be required of them in their official functions. The relief sought by the appellants is ultimate protection to the Louisiana general highway fund which is supported by statewide tax moneys.

THE CHALLENGED STATUTE

The challenged statute is an amendment to the Louisiana Constitution, LSA Article VI, Section 22 (G) (4) *Appendix C.*

QUESTIONS PRESENTED BY THIS APPEAL

1. Does the "due process" clause of the Fourteenth Amendment and/or the "guarantee" clause of Article IV, Section 4 of the Federal Constitution protect the citizens of a state from the application of a state act voted upon in a statewide election wherein the description of the proposition on the ballot was misleading and/or ambiguous to the extent that there is a reasonable question of its passage had it not been misleading and/or ambiguous?

2. Does Amendment Fourteen of the United States Constitution, Section 1, the "Due Process" clause and/or Article IV of Section 4 the "Guarantee" clause protect the citizens of a state from the application of

state acts which themselves are unintelligible and when viewed in the light of their description on the election ballot, misleading and/or deceptive?

3. Is the "Guarantee" clause of Article IV, Section 4 of the Federal Constitution a judicially enforceable right?

4. Did the passage of Article VI, Section 22 (G) (4) of the Louisiana constitution voted upon by the Louisiana electorate on November 8, 1966 seeking to provide a rededication of tax moneys to be used for the construction of a bridge or bridges across the Mississippi River at New Orleans conform to minimum constitutional standards when viewed in the light of the "Due Process" clause of the Fourteenth Amendment and the "Guarantee" clause of Article IV, Section 4.

Act 90 of the 1952 Louisiana Legislature, when it was adopted by the people by statewide vote, constituted an amendment to subsection (G) of Section 22 of Article VI of that state's constitution. Under authority of this constitutional provision the Mississippi River Bridge Authority which itself was authorized Act No. 7 of the legislature of 1952 and thereafter ratified by a statewide electoral vote, entered into an indenture and deed of trust, dated November 1, 1954 pursuant to which $65,000,000.00 of Municipal type revenue bonds were issued for the construction of a bridge at New Orleans

which in due course was built and which carries the name the Greater Mississippi River Bridge. These bonds were secured primarily by the toll revenues of that bridge and secondarily by the funds of state highway fund No. 2 as provided in Section 22 (G) of Article VI of the Louisiana Constitution. (Act 90 of 1952) This bonded indebtedness is still existing with approximately $47,000,000.00 of the bonds being outstanding and unpaid. In the 1963 gubernatorial campaign the present governor ran on a platform of making the bridge toll-free. Thereafter, upon his inauguration, the bridge was made a toll-free facility by the following procedure. A contract was entered into by the Mississippi River Bridge Authority and the Louisiana Department of Highways whereby the revenues required to service the presently outstanding bond issue of the Bridge Authority are derived from the general highway fund of the State of Louisiana supported by statewide taxes instead of the tolls.

In 1966 plans were made to construct additional crossings over the Mississippi River at New Orleans. The source of funds was a matter of public controversy and concern. In the 1966 regular session of the legislature by Act No. 555 a joint resolution originating in the Senate known as Senate Bill No. 281 proposed an amendment to Article VI, Section 22 (G) (4) of the constitution of the State of Louisiana to be submitted to the electors on November 8, 1966, this provided for a rededication of tax funds in order to finance the additional crossings. That is the amendment which forms the basis of this controversy. The resolution so

passed specifically set out that the official ballot to be used at said election, which did not contain the entire act, should have imprinted thereon a description of the act consisting of the following:

> "FOR the proposed amendment to Article VI, Section 22 (G) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the Parish of Tangipahoa and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to provide for funds for additional river crossings across the Mississippi River ~~at or near~~ New Orleans for so long a time as any bonds whatsoever are outstanding in connection with any such bridge *and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority.* (emphasis supplied)

and also:

> AGAINST the proposed amendment to Article VI, Section 22 (G) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so long a time as any bonds whatsoever are outstanding in connection with any such bridge *and reim-*

posing tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority." (emphasis supplied)

The above mentioned assertion in the description to the effect that the amendment would reimpose tolls on the existing bridge which had been made toll-free following the election of present governor was not, in fact, provided for in the amendment itself. Many voters, believing that a vote in favor of the amendment would reimpose tolls on the existing bridge, voted in favor of it. The reimposition of tolls on the existing bridge would have materially decreased the financial burden on the taxpayers in constructing additional bridges. The tolls amounted to $2,160,338.04 for the period from November 1, 1963 through October 31, 1964 and $3,751,728.97 for the period from November 1, 1962 through October 31, 1963.

The tabulation of the election results showed that 212,062 persons voted in favor of the amendment and 170,974 voted against it. There are 64 parishes (counties) in Louisiana. In 49 thereof the majority of voters voted against the amendment and in the remaining 15 parishes the majority of voters voted in favor of the amendment. Subsequent to its passage and when the public officials involved began preparation for the financing and construction of additional river crossings pursuant thereto this suit was brought as a class action to enjoin those officials from any acts in furtherance of constructing or financing the additional crossings. The grounds were that the passage of the contested amendment constituted a constructional fraud and de-

ception upon the voters, taxpayers and citizens of the state and therefore failed to meet certain federal constitutional minimums as follows:

> "The foregoing is in violation of the constitution of the Unted States particularly but not exclusively in that it:
>
> 1. Deprives the complainants as citizens, tax payers and voters of the State of Louisiana of their rights and property, including tax funds, without due process of law, and;
>
> 2. Deprives the complainants as citizens, tax payers and voters of the right of self-government, and;
>
> 3. Deprives the complainants as citizens, tax payers and voters of their right to vote;
>
> 4. Deprives the complainants as citizens, tax payers and voters of Louisiana of other federally protected rights."

A three-judge court was requested and, after a hearing, was granted. The matter was tried on stipulations of fact, exhibits and affidavits. It was the position of the appellants that the actual amendment did not require reimposition of tolls. In fact, the tolls have never been reimposed. The court below seemed to agree with appellants contention that the amendment did not, in fact, require the reimposition of tolls and in the main opinion describe that portion of the amendment thusly:

"It is charitable to say the language of this clause insofar as it relates to 'the building of an additional bridge or bridges' is inartistic. These words seem to us, in Judge Learned Hand's memorable phrase, to 'dance before (our) eyes in a meaningless procession . . . leav(ing) in (our) mind(s) only a confused sense of some vitally important, but successfully concealed purport . . .' At best ambiguous, they may in fact be unintelligible."

The court went on to say:

"But no issue of their interpretation is raised here, and whether meaning can be found in them is a matter for the Louisiana courts."

By the last statement is apparent that the court below was willing to assume that the amendment did not require the reimposition of tolls. This would seem to be further supported by the next statement of the court:

"So far as we can divine the intended meaning without resorting to haruspication, we surmise that the provision merely suspends any payment to the designated parochial authorities until after payment in full of all bridge bonds outstanding when the amendment was adopted, and of all bonds issued subsequent to its passage financed by the imposition or reimposition of tolls. If so, the constitutional amendment makes no requirement that tolls be reimposed

at any time, although the exigencies of financing and the demands of bond buyers may as a practical matter make the levying of tolls inescapable.

It is apparent that the text is so turgid that it would be difficult to say that any ballot designation could describe it accurately. The voters could attempt to derive their own interpretations from the entire text of the proposed amendment, which was published twice in every parish in the state. The language that appeared on the ballot was not phrased by some official but was set forth verbatim in the legislative act that proposed the constitutional amendment. What appeared on the ballot was sufficient to tell the voters what the complicated constitutional amendment was about. It was up to them to study its exact text.

The issue before us is not a proposition for grammarians. If the average voter had to decide what he was voting on from the ballot alone, he might well have read it as the plaintiffs do. But he did not have to decide from this summary. He could look at the amendment itself."

The obvious error of the court below was its holding that the average voter could look at the amendment itself and determine what it said. That would appear to lack a reasonable basis since if the sophisticated three-judge court could not itself decide what the

amendment required how could the average voter decide from the same amendment. Since the amendment, because of its being unintelligible is worthless to the voters in making their decision, nothing is left for him to make his decision upon except the ballot. The court below stated that the average voter

> "might well have read it as the plaintiffs do"

and this seems to support the plaintiffs position factually. The court decided, however, that

> "the procedure followed by Louisiana does not deprive the plaintiffs of due process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words"

How the court felt that the publication of an unintelligible amendment constituted a fair opportunity for the voters to be informed is a mystery.

Judge Rubin, who wrote the majority opinion decided that the "Guarantee" clause of Article IV, Section 4 of the Constitution which provides:

> "The United States shall guarantee to every state in this union a republican form of government."

was not a judicially enforceable right and that its enforcement has been held to be a matter for Congress rather than for the courts. Wisdom, Circuit Judge, joined by Boyle, District Judge, wrote a concurring opinion in the result but took an opposite position regarding the enforceability of the "Guarantee" clause.

REASONS WHY PLENARY CONSIDERATION IS REQUIRED

In the case of *Reynolds v. Sims,* 84 S. Ct. 1362, 377 U.S. 554 (1964) the Court affirmed as undeniable the constitutional right of a citizen to vote in state as well as federal elections. This opinion did not define the right as a mere mechanical privilege, but set it out as a right which could not be encumbered, alienated, divested, destroyed or nullified by either sophisticated or blatant methods. The court said: 84 S.Ct. 1377, 1378

> "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, Ex parte Yarbrough, 110 U.S. 651; 4 S. Ct. 152, 28 L. Ed. 274, and to have their votes counted, United States v. Mosley, 238 U.S. 383, 35 S. Ct. 904, 59 L. Ed. 1355. In Mosley the Court stated that it as 'equally unquestionable that the right to have one's vote counted is'

as open to protection * * * as the right to put a ballot in a box." 238 U.S., at 386, 35 S. Ct. at 905. The right to vote can neither be denied outright, Guinn v. United States, 238 U.S. 347, 35 S. Ct. 926, 59 L. Ed. 1340, Lane v. Wilson, 307 U.S. 268, 59 S. Ct. 872, 83 L. Ed. 1281, nor destroyed by alteration of ballots, see United States v. Classic, 313 U.S. 299, 315, 61 S. Ct. 1031, 1037, 85 L. Ed. 1368, nor diluted by ballotbox stuffing Ex parte Siebold, 100 U.S. 371, 25 L. Ed. 717, United States v. Saylor, 322 U.S. 385, 64 S. Ct. 1101, 88 L. Ed. 1341. As the Court stated in Classic, 'Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted * * *.' U.S., at 315, 61 S. Ct., at 1037. Racially based gerrymandering, Gomillion v. Lightfoot, 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110, and the conducting of white primaries, Nixon v. Herndon, 273 U.S. 536, 47 S. Ct. 446, 71 L. Ed. 759, Nixon v. Condon, 286 U.S. 73, 52 S. Ct. 484, 76 L. Ed. 984, Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987, Terry v. Adams, 345 U.S. 461, 73 S. Ct. 809, 97 L. Ed. 1152, both of which result in denying to some citizens their right to vote, have been held to be constitutionally impermissible. And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote *freely* for the candidate of one's choice is of the essence of a democratic society and *any restrictions* on that

right strike at the heart of representative government." (emphasis supplied)

The court, in further defining these inalienable rights stated: 84 S. Ct. 1381

> "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since *the right to exercise the franchise in a free and unimpaired manner* is a preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Almost a century ago, in Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220, the Court referred to 'the political franchise of voting' as a 'fundamental political right, because preservative of all rights.' 118 U.S., at 370, 6 S. Ct. at 1071." (emphasis supplied)

In the case of *Harman v. Forssenius,* 85 S. Ct. 1177, 380 U.S. 541 (1965) the court, regarding the matter of conducting elections, stated: 85 S. Ct. 1185

> "It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. Frost & Frost Trucking Co. v. Railroad Comm'n of California, 271 U.S. 583, 46 S. Ct. 605, 70 L. Ed. 1101. "Constitutional rights would be of little value if they could be * * * indirectly denied," Smith v. Allwright, 321 U.S. 649, 664, 64 S. Ct.

757, 765, 88 L. Ed. 987, or 'manipulated out of existence.' Gomillion v. Lightfoot, 364 U.S. 339, 345, 81 S. Ct. 125, 129, 5 L. Ed. 2d 110. Significantly, the Twenty-fourth Amendment does not merely insure that the franchise shall not be 'denied' by reason of failure to pay the poll tax; it expressly guarantees that the right to vote shall not be 'denied or abridged' for that reason. Thus, like the Fifteenth Amendment, the Twenty-fourth 'nullifies sophisticated as well as simple-minded modes' of impairing the right guaranteed. Lane v. Wilson, 307 U.S. 268, 275, 59 S. Ct. 872, 876, 83 L. Ed. 1281. 'It hits onerous procedural requirements which effectively handicap exercise of the franchise' by those claiming the constitutional immunity. Ibid.; cf. Gray v. Johnson, 234 F. Supp. 743 (D.C.S.D. Miss.)."

It is the position of the appellants in this case that a voter is as effectively deprived of his constitutional right to vote by a misleading description on a ballot just as surely as he would be if his vote were not counted or if the ballot box was stuffed with false and fraudulent ballots. That would be just as effective as depriving him of the right to vote on the grounds of race, color, creed or for any other unlawful reason. If a proposition on a ballot may be misstated with impunity under the federal constitution, all important rights could be nullified by sophisticated manipulation of the wording of the ballot.

Insofar as counsel's research has disclosed this exact method of vote manipulation or should we say, franchise deprivation, has not before been presented to this court. However, it would seem clear from the landmark case of *Reynolds* and *Harman,* supra, that we are dealing with rights so fundamental and so solidly grounded in the federal constitution that any other viewpoint would be a departure from the protective attitude of the Supreme Court in the reapportionment and poll tax cases as well as those involving other civil and political rights.

GUARANTY CLAUSE

Article IV, Sec. IV of the U. S. Constitution, states:

> "The U.S. shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic ballots."

In the case of *Minor v. Hoppersett,* 88 U.S. 162, 21 Wall 162, 22 L. Ed. 627, the court interpreting Article IV, Sec. IV, U.S. Constitution said:

> "It is true that the U.S. guarantees to every state a republican form of government. It is also true that no state can pass a bill of attainer; and that no person can be deprived of life, liberty, or property, without due process of law. All these provisions of the constitution must be

construed with other parts of the instrument, and the light of the surrounding circumstances.

The guarantee is a republican form of government. No particular form of government is designated as republican, neither in the exact form to be guaranteed and any manner especially designated. Here, as in other parts of the instrument, we are compelled to search elsewhere to ascertain what was intended.

The guarantee necessarily implies a duty on the part of the states themselves to provide such a government. All the states had governments when the constitution was adopted. In all, the people participated to some extent through their elected representatives in the manner specifically provided. These governments the constitution did not change. They were accepted precisely as they were and it is therefore, to be presumed that they were such as it was the duty of the state to provide. Thus, we have unmistakable evidence of what was republican in form within the meaning of the term as employed by the constitution." (emphasis supplied)

In the case of *Chishom v. Georgia*, 2 U.S. (2 Dall.) 419, 457, 1 L. Ed. 440, this Court held that a "republican" government within the meaning of the term as used in the federal constitution is "one constructed on

the principal that the supreme power resides in the body of the people."

It is, therefore, submitted that a misleading title on a ballot violates both Article IV, Sec. IV and the Fourteenth amendment and the U. S. Constitution. Under Article IV, Sec. IV the state has an obligation to provide a republican form of government. Such a government is one wherein the supreme power resides in the body of the people, therefore, requiring elections to express this power. If the people are allowed to be misled by wording on the ballots, then this supreme power is eroded as effectively as if there was an aristocracy or a monarchy. The Supreme Court of Minnesota in the case of *Hopkins v. City of Duluth,* 83 N.W. 536 (1900) had reason to construe the effect of Article IV, Sec. IV of the U.S. Constitution and said:

> "It is a federal guarantee to the exercise by federal, rather than state authority * * *. It will be admitted, however, that this state cannot supplant its republican form of government with aristocratic and monarchicial invasions."

If Article IV, Sec. IV, as interpreted by the Supreme Court in *Minor supra,* is to be given the effect that it was in *Minor,* that is, that the form of republican government guaranteed by the constitution was that form of government that the states were embracing at the time of the constitutional adoption, then one could look to the state laws as they are construed to determine if under those forms of government, mis-

leading ballots could be tolerated. The weight of the decisions are to the contrary. In *Ex parte B. F. Tipton,* 93 S.E. 2d 640, Supreme Court of South Carolina held that a deceptive and misleading title on a proposed amendment rendered the amendment a nullity. The Supreme Court of Arkansas in *Hoban v. Hall,* 316 S.W. 2d 185, held that the ballot title of a proposed constitutional amendment was insufficient because it failed to supply the voter with information the state constitution expects him to have and therefore, the court granted an injunction against effectuating the amendment. In that case, the court stated that the ballot need not be a complete abstract of the act. It must, however, provide the elector with information concerning the choice he is called upon to make and it further stated:

> "The great body of the electors, when called upon to vote for or against an act at the general election will derive their information about it from the ballot title. This is the purpose of the title."

The Supreme Court of Georgia in *Seago v. Richmond County,* 126 S.E. 2d 657 (1962) held that the ballot at issue was insufficient to enable voters to intelligently pass upon the proposed amendment and therefore, the amendment was not validly ratified. In 1965 the Supreme Court of Oregon in *Mosser v. Thornton,* 416 Pacific Reporter 2d, 788, struck down a constitutional amendment because the ballot was insufficient insofar as it failed to mention the power of states or its tax commission to revise local budgets

and failed to inform that voter approved expenditures in excess of limitation could be secured only in a limited matter.

Considering other constitutional questions, it is clear that the State of Louisiana was exercising its taxing power in this instance. Simply stated, the state constitution, up to the point that the protested amendment would become effective, required that the funds left over in Highway Fund No. 2 after servicing the bonded indebtedness of the existing bridge, would be returned to the General Highway Fund. If this be the case, these funds, to the extent of their amount, would reduce the taxing burden on all of the citizens of the State of Louisiana because the General Highway Fund is supported by tax. The protested amendment sought to change and divert those funds into the proposed construction of new bridges thereby increasing the burden, but if the title of the ballot was to be believed, the collection of tolls would begin thereby reducing the increase by approximately two million dollars per year. Therefore, the actions of Louisiana in this instance was the exercise of a taxing power. In the case of *Ohio Oil Co. v. Conway,* 50 S. Ct. 310, 2 18 U.S. 146 (1930) the court held that states are subject to due process and equal protection requirements in exercising taxing power.

It is a hornbook proposition that due process requirements imply adequate notice. In this case, the notice was either the ballot title presented to the voter in the voting booth or, if the notice must be construed to be the newspaper publications, the notice was then

qualified by the title to the ballot. In either case, the notice misled the voter into believing that he was voting for a return of toll collection on an existing bridge. Nothing in the title would lead him to believe otherwise and nothing in the title would place him on guard that he should look elsewhere to determine the effect of his vote. In the case of *U.S. v. Shelby Iron Co.*, 47 S. Ct. 515, 237 U.S. 571, the court held that, in matters of notice, in order to charge one to the necessity of looking further, the facts contained in the notice must be such as ordinarily would excite further inquiry. There was nothing about the ballot in this case which would indicate that one need look further to determine under what circumstances tolls would be reimposed.

It is hard to conceive of a more important aspect of freedom and democracy than the proposition that the ballots on voting machines must be free from ambiguity and deception. For it to be otherwise would be no different than a misstatement of a candidate's name on the voting machine.

Respectfully,

Donald V. Organ
219 Carondelet Street
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Counsel for Appellants

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MIRANNE, GREVEMBERG & ORGAN
NEW ORLEANS, LOUISIANA

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CLAUDE L. KOHLER, DAVID L. BURNES and RENE S. WOGAN, individually and as citizens, tax payers and voters of the State of Louisiana, for themselves and all other persons similarly situated and the PENNISTON-GENERAL TAYLOR ASSOCIATION and the UPTOWN CIVIC ASSOCIATION

Plaintiffs

versus

CIVIL ACTION
No. 68-253
SECTION "C"
(Three-Judge Court)

A. P. TUGWELL, individually and as Treasurer of the State of Louisiana, NEVILLE LEVY, individually and as Chairman of the Mississippi River Bridge Authority and/or the Greater New Orleans Mississippi River Bridge Authority and ARSENE L. STEWART, individually and as Director of the Department of Highways for the State of Louisiana and JOHN J. McKEITHEN, individually and as Governor of the State of Louisiana, and their successors in office

Defendants

Donald V. Organ, Esq.
Attorney for Plaintiffs
Jack P. Gremillion, Esq.
William P. Schuler, Esq.
William P. Curry, Jr., Esq.
Louis B. Porterie, Esq.
Jesse S. Guillot, Esq.
Attorneys for Defendants

Before WISDOM, Circuit Judge, BOYLE and RUBIN, District Judges.

RUBIN, District Judge:

Louisiana citizens seek an injunction prohibiting any action under the authority of a state constitutional amendment adopted in 1966 on the ground that the designation of the amendment as it appeared on the state ballot misled voters. Hence, they contend that those who voted in favor of the enactment were deprived of their right to vote, and were denied both Due Process of Law[1] and the right to a Republican Form of Government.[2]

In 1952 Louisiana's voters adopted a constitutional amendment to authorize the dedication of state revenues to supplement the financing of a toll bridge. After the bridge was built, some of its users objected to the payment of tolls. During the 1964 gubernatorial campaign, one of the candidates promised that, if he

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[1]U.S. Const. amend. XIV, §1.
[2]U.S. Const. art. 4, §4.

were elected, passage on the bridge would be free. Upon his election, the Governor kept his promise. He approved a contract between the Mississippi River Bridge Authority and the State of Louisiana Department of Highways.[3] This provided that State highway funds would be paid to service the bonds and tolls would not be collected so long as this was done.

Later the Mississippi River Bridge Authority began to plan the possible construction of additional bridges across the river in the New Orleans area, and it was necessary to amend the Constitution to permit the further pledge of state funds to assist in financing the construction of any new bridge.

Accordingly, on November 8, 1966, Louisiana's citizens were presented with the proposal as part of a ballot containing forty-four other proposed amendments to their Constitution,[4] already the longest in the Union.[5] Proposed Amendment 26 was identified on the ballot as follows:

"For or Against:"

"The proposed amendment to Article VI, Section 22 (a) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa

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[3]The trustee for the bondholders neither concurred in nor objected to the contract and the arrangement has continued in force without apparent objection by the bondholders.

[4]The full ballot is reprinted in Appendix A.

[5]See Havard, "The 1958 Proposals to Amend the Louisiana Constitution," 19 La.L.Rev. 128 (1958) for a discussion of government by constitutional referendum.

> and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority *and so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so long a time as any bonds, whatsoever are outstanding in connection with any such bridge and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority.*" (Emphasis supplied)

Louisiana's constitution requires that proposed constitutional amendments be submitted to the voters but mentions the manner in which they are to be described only by stating that amendments "shall be so submitted as to enable the voters to vote on each amendment separately."[6] However, the State Constitution does require[7] the full text of each proposed amendment to be published in a newspaper in each of the state's sixty-four parishes twice during a period at least thirty and not more than sixty days before the election, and this was done.

The plaintiffs contend that the language in the ballot's description of Amendment 26 led voters to believe that tolls would be reimposed on the existing bridge as soon as the constitutional amendment became effective, twenty days after issuance of the Governor's proclamation declaring its passage,[8] when in

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[6]La. Const. art. XXI, §1.
[7]*Id.*
[8]*Id.*

fact the amendment contains no requirement that tolls be reimposed. They urge that voters were misled, for the ballot description would lead the average voter to read the words ". . . *and reimposing reasonable tolls on all bridges*" to mean *as soon as this amendment becomes effective.*

The defendants read the ballot designation as saying that the amendment is "to provide for . . . reimposing reasonable tolls," finding the inference in the text that the tolls will be reimposed when additional bridges are built.

The relevant part of the amendment itself first provides for the payment of certain sums from State Highway Fund No. 2 to the Parish of Tangipahoa and to the St. Charles-St. John the Baptist Bridge and Ferry Authority. Then it states:

> ". . . provided that the foregoing $100,000.00 annual payment to the governing authority of the parish of Tangipahoa and the foregoing $150,000.00 annual payment to the St. Charles-St. John the Baptist Bridge and Ferry Authority shall in no event become due and payable unless and until presently outstanding bonds of the Mississippi River Bridge Authority are paid or refunded in full in principal and interest in order for the building of an additional Bridge or Bridges within the Jurisdiction of the Mississippi River Bridge Authority for which financing the imposition or re-imposition of tolls is required."

It is charitable to say the language of this clause insofar as it relates to "the building of an additional Bridge or Bridges" is inartistic. These words seem to us, in Judge Learned Hand's memorable phrase, to "dance before (our) eyes in a meaningless procession . . . leav(ing) in (our) mind(s) only a confused sense of some vitally important, but successfully concealed purport . . ."[9] At best ambiguous, they may in fact be unintelligible. But no issue of their interpretation is raised here, and whether meaning can be found in them is a matter for the Louisiana courts.[10]

So far as we can divine the intended meaning without resorting to haruspication, we surmise that the provision merely suspends any payments to the designated parochial authorities until after payment in full of all bridge bonds outstanding when the amendment was adopted and of all bonds issued subsequent to its passage financed by the imposition or reimposition of tolls. If so, the constitutional amendment makes no requirement that tolls be reimposed at any time, although the exigencies of financing and the demands of bond buyers may as a practical matter make the levying of tolls inescapable.

It is apparent that the text is so turgid that it would be difficult to say that any ballot designation could describe it accurately. The voters could attempt to derive their own interpretations from the entire text of the proposed amendment, which was published twice

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[9]Learned Hand, Thomas Walter Swan, 57 Yale L.J. 167, 169 (1947).

[10]Graham v. Jones, 198 La. 507, 3 So.2d 761 (1941).

in every parish in the state. The language that appeared on the ballot was not phrased by some official[11] but was set forth verbatim in the legislative act that proposed the constitutional amendment. What appeared on the ballot was sufficient to tell the voters what the complicated constitutional amendment was about. It was up to them to study its exact text.

The issue before us is not a proposition for grammarians. If the average voter had to decide what he was voting on from the ballot alone, he might well have read it as the plaintiffs do. But he did not have to decide from this summary. He could look at the amendment itself.

The ballot, as will appear from Appendix A, was long. No one who has voted in any election at which voting machines are used can fail to know that Louisiana's voters, once they stand before a voting machine in a voting booth, are not likely to be able to study the description of each proposition on the ballot. They must come to the polls prepared in advance to vote on the amendments if they are to vote with any semblance of understanding.

The requirements of both the Louisiana Constitution and the Federal Constitution were interpreted by the Louisiana Supreme Court in *Hotard v. City of New Orleans*[12] to mean: "All that is required to be printed on the ballot is sufficient information to identify the

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[11]See Blitz v. Neuner, 240 P.2d 1193 (Ore. S.Ct. 1952); Dodd v. Neuner, 216 P.2d 670 (Ore. S.Ct., 1950).

[12]213 La. 843, 35 So.2d 752, 756 (1948).

proposed amendment which the voter is voting for or against."[13] "Undeniably," as the United States Supreme Court said, in *Reynolds v. Sims*,[14] "the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections." However, a federal court must not interfere with the internal affairs of a State unless it is necessary to do so to protect those rights guaranteed every citizen by the Federal Constitution.[15] The procedure followed by Louisiana does not deprive the plaintiffs of Due Process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words.

Nor did Louisiana deny the plaintiffs their right to a Republican Form of Government. Article IV, Section 4, of the Constitution provides "The United States shall guarantee to every State in this Union a Republican Form of Government." My brothers and I agree that the state action here challenged does not invade the plaintiffs' rights under the Guaranty Clause for the same reasons as those we have stated with respect to due process. But we differ on whether there is another and more fundamental reason why the plaintiffs may not successfully invoke the Guaranty Clause.

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[13] An appeal from *Hotard* was dismissed by the Supreme Court for want of a substantial federal question. 335 U.S. 803 (1948).

[14] 377 U.S. 533, 554 (1964).

[15] Ohio Oil Co. v. Conway, 281 U.S. 146 (1930); NAACP v. Thompson, 357 F.2d 831 (5 Cir., 1966).

Ever since the decision in *Luther v. Borden*, 1849, 7 How. (U.S.), 1, the Guaranty Clause has been held to be primarily political in nature, and its enforcement has been held to be a matter for Congress rather than for the courts.[16]

Both of my brothers read *Baker v. Carr*[17] and *Reynolds v. Sims*[18] as expressing second thoughts on the subject. However, the majority opinion in *Baker* thoroughly reviewed the decisions dealing with the Guaranty Clause and stated: "The Court has [long] refused to resort to the Guaranty Clause . . . as the source of a constitutional standard for invalidating state action."[19] The remainder of the opinion justifies the conclusion that the Court in 1962 still considered, as it said it had "consistently held" previously, "that a challenge to state action based on the Guaranty Clause presents no justiciable question. . . ."[20] The opinion in *Reynolds v. Sims* does contain the passing observation that "some questions raised under the Guaranty Clause are nonjusticiable, where 'political' in nature and where there is a clear absence of judicially manageable standards,"[21] and cites as authority the majority opinion in *Baker v. Carr*. This sentence, however, was employed merely to preface the Court's observation, "Nevertheless, it is not inconsistent with this view to hold that

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16Pacific States Telephone and Telegraph Co. v. Oregon, 223 U.S. 118 (1912); Coleman v. Miller, 307 U.S. 433, 455-56 (1939); Taylor & Marshall v. Beckham (No. 1), 178 U.S. 548 (1900).
17369 U.S. 186 (1962).
18377 U.S. 533 (1964).
19369 U.S. at 223.
20369 U.S. at 224.
21377 U.S. at 582.

. . . the Equal Protection Clause can and does require more."[22] This introductory sentence does not justify the conclusion that the Court was altering the views it had so recently and fully considered in *Baker v. Carr.*

No federal judge can deny that federal courts should be loath to read any clause out of the Constitution as judicially unenforceable. But courts should also be reluctant to cast doubt on established constitutional doctrine. Judges should not forget that the judiciary is not the sole guardian of the Constitution. It is the duty of the Congress and the President to uphold and defend portions of the Constitution that, for one reason or another, have not been considered appropriate areas for judicial action.[23] If the decisions in *Luther v. Borden* and *Baker v. Carr* require reappraisal, it is not proper to do it here and now.

Whichever view of judicial enforcement of the Guaranty Clause is taken, neither that clause nor the Fourteenth Amendment requires the state to describe on the ballot itself the contents of a proposition submitted for a popular vote. Nor do the plaintiffs assert such a proposition. They contend merely that the state must not mislead its voters. It is unnecessary for us to

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22*Id.*

23Justice Frankfurter in his dissent in *Baker v. Carr*, 1962, 369 U.S. 186, reviewed a number of areas in addition to the Guaranty Clause, that traditionally have been held non-justiciable. These include: cases concerning war and foreign affairs, the extent of congressional regulatory power over the tribes and dependent communities of Indians, matters concerning the structure and organization of the political institutions of the States, and "abstract questions of political power, of sovereignty of government."

determine exactly what each clause does require of the state: we accept the plaintiffs' premise that the state may not mislead its voters to the extent that they do not know what they are voting for or against. And we find that this was not done here.

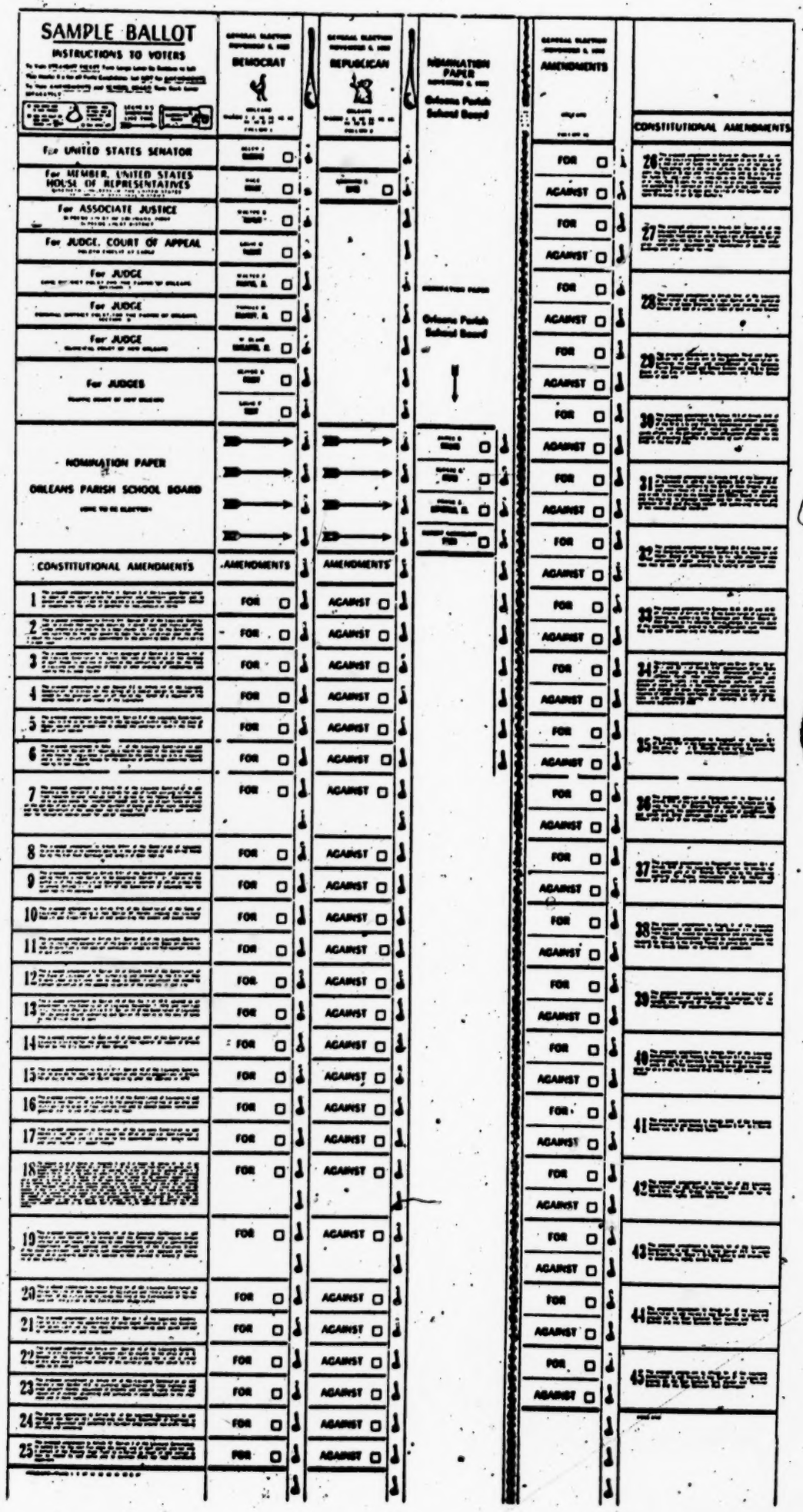
Since Louisiana's legislature has not denied its citizens any federal constitutional rights by the manner in which the state's constitutional amendment was submitted to them, the plaintiffs' suit will be DISMISSED.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
October __, 1968


SAMPLE BALLOT
INSTRUCTIONS TO VOTERS
DEMOCRAT
REPUBLICAN
NOMINATION PAPER
Orleans Parish School Board
AMENDMENTS
CONSTITUTIONAL AMENDMENTS
For UNITED STATES SENATOR
For MEMBER, UNITED STATES HOUSE OF REPRESENTATIVES
For ASSOCIATE JUSTICE
For JUDGE, COURT OF APPEAL
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NOMINATION PAPER
ORLEANS PARISH SCHOOL BOARD
Orleans Parish School Board
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APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CLAUDE L. KOHLER, DAVID L. BURNES and RENE S. WOGAN, individually and as citizens, tax payers and voters of the State of Louisiana, for themselves and all other persons similarly situated and the PENNISTON-GENERAL TAYLOR ASSOCIATION and the UPTOWN CIVIC ASSOCIATION,

Plaintiffs

versus

CIVIL ACTION
No. 68-253
SECTION "C"

A. P. TUGWELL, individually and as Treasurer of the State of Louisiana, NEVILLE LEVY, individually and as Chairman of the Mississippi River Bridge Authority and/or the Greater New Orleans Mississippi River Bridge Authority and ARSENE L. STEWART, individually and as Director of the Department of Highways for the State of Louisiana and JOHN J. McKEITHEN, individually and as Governor of the State of Louisiana, and their successors in office,

Defendants

WISDOM, Circuit Judge, whom BOYLE, District Judge, joins, concurring:

I concur in the result and all of the opinion relating to the Fourteenth Amendment. I do not go all the way with my brother Rubin's views on the Guaranty Clause.

Section 4 of Article IV declares that "*the United States* [not Congress] shall guarantee to every State in this Union a Republican Form of Government". (Emphasis and interpolation added.) It is true that Luther v. Borden[1] put this giant to sleep.[2] And the expanding importance of the Fourteenth Amendment, through the due process and equal protection clauses and through its incorporation of most of the Bill of Rights, reduced the need for courts to resort to the Guaranty Clause to protect the rights of individuals against a state's abuse of governmental processes. But the guarantee still has a proper place in a federal system of checks and balances.[3]

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[1]Luther v. Borden, 1849, 7 How. (U.S.) 1, 12 L.Ed. 581.

[2]"It is a clause which is like a sleeping giant in the Constitution, never until this recent war awakened, but now it comes forward with a giant's power." Charles Sumner, Cong. Globe, 40th Cong., 1st Sess. 614 (1867).

[3]On the history and potential of the clause see Bonfield, The Guarantee Clause of Article IV, Section 4: A Study in Constitutional Desuetude, 46 Minn. L. Rev. 513 (1962). See also Franklin, Concerning the Influence of Roman Law on the Formulation of the Constitution of the United States, 38 Tul. L. Rev. 621 (1964) and Franklin, Influence of the Abbé de Mably and of Le Mercier de la Rivière on American Constitutional Ideas Concerning the Republic and Judicial Review, in Perspectives of Law, Essays for Austin Wakeman Scott, p. 96 (1964). For a discussion of the clause in the light of Baker v. Carr, see Bonfield, Baker v. Carr, New Light on the Constitutional Guarantee of Republican Government and Nahstoll, The Role of the Federal Courts in the Reapportionment of State Legislatures, 50 Am. Bar Ass'n Jour. 842 (1964).

In Baker v. Carr[4] Justice Brennan, for the Court, quoting Luther v. Borden, concluded that only Congress could enforce the guarantee. However, the identical issue held nonjusticiable under the guaranty clause was justiciable under the equal protection clause; the underrepresented citizens therefore could live without benefit of Section 4, Article IV. Justice Frankfurter disagreed with the Court. He felt strongly that malapportionment of a state legislature was a nonjusticiable controversy, under the Guarantee Clause or under the Equal Protection Clause "masquerading" under that "label". He pointed out, however, in his dissenting opinion: Article IV, section 4 "is not committed by express constitutional terms to Congress. It is the nature of the controversies arising under it, nothing else, which has made it judicially unenforceable". 369 U.S. at 297. Justice Douglas, in his concurring opinion, disagreed with the court — and with Justice Frankfurter: "The right to vote is inherent in the republican form of government". He said:

> 'The statement in Luther v. Borden . . . that this guarantee is enforceable only by Congress or the Chief Executive is not maintainable. Of course the Chief Executive, not the Court, determines how a State will be protected against invasion. Of course each House of Congress, not the Court, is the 'judge of the elections, returns, and qualifications of its own members,' . . . But the abdication of all judicial functions respecting voting rights . . . indeed is contrary

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[4]Baker v. Carr, 1962, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663.

> to the full panoply of judicial protection to voting rights. . . . The court's refusal to examine the legality of the regime of marital law which had been laid upon Rhode Island is indefensible." 369 U.S. at 243, no. 2.

In Reynolds v. Sims[5] the Court noted that in *Baker* it had stated that "*some* questions raised under the Guaranty Clause, are nonjusticiable where 'political' in nature and where there is a clear absence of judicially manageable standards". (Emphasis added.) 377 at 582. The nature of the question, therefore, and not the mere invocation of the clause, determines whether a contention is justiciable and the clause judicially enforceable.

The question in this case is whether the constitutional amendment was adopted in an unrepublican manner; more specifically, whether the ballot was so misleading that the people were deprived of one of the fundamental rights inherent in a republican government, the right to vote on an amendment to their constitution. The same standards "judicially manageable" in determining whether the plaintiffs were deprived of due process would seem to be applicable in determining whether they were deprived of the protection of a republican government. I regard the issue here, therefore, as justiciable under the Guaranty Clause. On the merits, however, and for the same reasons the due process clause was not offended, I would hold that the

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[5]Reynolds v. Sims, 1964, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506.

process by which Amendment 26 to the Louisiana Constitution was adopted does not offend Article IV, Section 4 of the United States Constitution.

The line of judicial development of the republican guarantee, bent and broken since Luther v. Borden, is not beyond repair. Some day, in certain circumstances, the judicial branch may be the most appropriate branch of government to enforce the Guaranty Clause.[6] Federal courts should be loath to read out of the Constitution as *judicially* nonenforceable a provision that the Founding Fathers considered essential to formulation of a workable federalism. James Madison best stated the case for Article IV, Section 4. He regarded it as the basis for the doctrine of federal interposition:

> "It may possibly be asked, what need there could be of such a precaution, and whether it may not become a pretext for alterations in the State governments, without the concurrence of the States themselves. These questions admit of ready answers. If the interposition of the general government should not be needed, the provision for such an event will be a harmless superfluity only in the Constitution. But *who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign* powers?"[7] (Emphasis added.)

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[6] "Today would this Court hold nonjusticiable or 'political' a suit to enjoin a Government who, like Fidel Castro, takes everything into his own hands and suspends all election laws." Baker v. Carr, 369 U.S. at 247, Justice Douglas concurring.

[7] The Federalist, No. 43, p. 312 (Wright Ed., 1961).

APPENDIX B

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 928.

APPENDIX C

§ 22. General highway fund

Section 22. Sources of revenue. The General Highway Fund shall be derived from the following sources:

* * * *

(g) * * *

* * * *

Section 22 (g) (4) Commencing on June 30, 1967 and on June 30th of each year thereafter, fifty per cent (50%) of the surplus monies remaining in State Highway Fund No. 2, after all payments hereinabove required shall have been made, shall be paid by the State Treasurer (a) Subject to the rights of the holders of any bonds presently outstanding issued pursuant to sub-paragraph 4 of Article VI, Section 22 (g) of this Constitution, but not including the refunding of any such bonds, there shall first be paid to the police jury of the parish of Tangipahoa, commencing on June 30,

1967 (or as soon thereafter as payment can be made without impairing any existing contractual obligations), and on June 30th of each year thereafter, the sum of One Hundred Thousand Dollars ($100,000.00), which monies shall be used by said police jury for parish purposes at the discretion of the police jury, and secondly, there shall be paid to the St. Charles-St. John the Baptist Bridge and Ferry Authority, commencing on June 30, 1967, (or as soon thereafter as payment can be made without impairing any existing contractual obligations), and on June 30th of each year thereafter, the sum of One Hundred Fifty Thousand Dollars ($150,000.00), which monies shall be used by such bridge and ferry authority exclusively for the purpose of defraying costs of detailed engineering plans and specifications, the obtaining, gathering and compiling of all data necessary thereto, payment of the initial cost of acquisition, by purchase or by construction, of bridges or ferries, or to operate, maintain and improve the same, or as security for the payment of the principal of and interest on bonds, and the amounts necessary to make payments into sinking funds, reserve funds and other funds required to be established and maintained by said bridge and ferry authority to comply with any contract made with the holders of its bonds, including refunding bonds, to be issued by said bridge and ferry authority as said authority may determine; provided that the foregoing $100,000.00 annual payment to the governing authority of the parish of Tangipahoa and the foregoing $150,000.00 annual payment to the St. Charles-St. John the Baptist Bridge and Ferry Authority shall in no event become due and payable unless and until presently outstanding bonds

of the Mississippi River Bridge Authority are paid or refunded in full in principal and interest in order for the building of an additional Bridge or Bridges within the Jurisdiction of the Mississippi River Bridge Authority for which financing the imposition or re-imposition of tolls is required. So long as any revenue bonds whatsoever, including refunding bonds, issued by the St. Charles-St. John the Baptist Bridge and Ferry Authority are outstanding the provisions of this Subsection 22 (g) (4) (a), Article VI of this Constitution shall be irrevocable and shall be and constitute a valid and binding contract between the holders of any such bonds, the St. Charles-St. John the Baptist Bridge and Ferry Authority, and then annually to the bridge and ferry authority created under authority of Act 7 adopted at the regular session of the Legislature for the year 1952 and amendments and supplementary laws thereto in connection with the construction or acquisition of toll bridges and any ferries intended to be operated as part of the system of river crossings across the Mississippi River at or near New Orleans under the authority of such legislation, and shall be used exclusively by the such bridge and ferry authority to supplement the revenues thereof, for the purpose of paying the principal of and interest on bonds issued by such bridge and ferry authority and the amounts necessary to make payments into sinking funds, reserve funds, and other funds required to be established and maintained by said bridge and ferry authority to comply with any contract made with the holders of its bonds. The revenues dedicated to State Highway Fund No. 2 and payable to Mississippi River Bridge Authority by this paragraph (4) (b) shall continue to be dedicated

and applied as directed as long as any bonds of such authority whatsoever including refunding bonds are outstanding in connection with any bridges including the present bridge and any future bridge or other facilities within its jurisdiction, and after said bonds have been fully paid in principal and interest further payments to said bridge and ferry authority shall cease and the said fifty per cent (50%) of the surplus monies remaining in State Highway Fund No. 2 shall be transferred to the General Highway Fund.

Any toll bridges constructed or acquired or to be constructed or acquired by such bridge and ferry authority, and any ferry or ferries acquired or to be acquired by such authority and intended to be operated as a part of such river crossings, are hereby declared to be a part of the State Highway System, and the State Department of Highways or its successors is authorized to enter into contracts with such authority for the operation and maintenance of such bridges and ferry or ferries and to construct approaches and connecting highways to connect such river crossings with the State Highway System.

On or after the 1st day of January, 1955, the Legislature shall not alter the method of appointment of members of the board of any bridge or ferry authorities organized under the provisions of Act 7 of 1952 which are already in existence on that date without the consent and approval of the governing bodies of the parishes which have participated in the organization of such bridge or ferry authorities. (As amended Acts 1966, No. 555, adopted Nov. 8, 1966.)

* * * *

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Supreme Court of the United States

October Term, 1968.

No. 933

CLAUDE L. KOHLER, DAVID L. BURNES and RENE S. WOGAN, individually and as citizens, taxpayers and voters of the State of Louisiana, for themselves and all other persons similarly situated and the PENNISTON-GENERAL TAYLOR ASSOCIATION and the UPTOWN CIVIC ASSOCIATION,

versus

A. P. TUGWELL, individually and as Treasurer of the State of Louisiana, NEVILLE LEVY, individually and as Chairman of the Mississippi River Bridge Authority and/or the Greater New Orleans Mississippi Bridge Authority and ARSENE L. STEWART, individually and as Director of the Department of Highways for the State of Louisiana and JOHN J. McKEITHEN, individually and as Governor of the State of Louisiana, and their successors in office.

Appeal from the United States District Court for the Eastern District of Louisiana sitting as a three-judge court, case No. 68-253.

MOTION TO AFFIRM.

DOROTHY WOLBRETTE and
WILLIAM P. CURRY,
Assistant Louisiana Attorneys General,
Room 104 Supreme Court Building,
New Orleans, Louisiana,
DUKE & PORTERIE,
JESSIE S. GUILLOT.

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SUPREME COURT OF THE UNITED STATES

October Term, 1968.

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CLAUDE L. KOHLER, DAVID L. BURNES and RENE S. WOGAN, individually and as citizens, taxpayers and voters of the State of Louisiana, for themselves and all other persons similarly situated and the PENNISTON-GENERAL TAYLOR ASSOCIATION and the UPTOWN CIVIC ASSOCIATION,

versus

A. P. TUGWELL, individually and as Treasurer of the State of Louisiana, NEVILLE LEVY, individually and as Chairman of the Mississippi River Bridge Authority and/or the Greater New Orleans Mississippi Bridge Authority and ARSENE L. STEWART, individually and as Director of the Department of Highways for the State of Louisiana and JOHN J. McKEITHEN, individually and as Governor of the State of Louisiana, and their successors in office.

Appeal from the United States District Court for the Eastern District of Louisiana sitting as a three-judge court, case No. 68-253.

MOTION TO AFFIRM.

Pursuant to Rule 16 (1) (c) of the rules of this Court, the defendants herein move that the judgment of the District Court be affirmed.

STATEMENT.

This is an appeal from the judgment of a Three-Judge District Court dismissing a class action brought by plaintiffs seeking an injunction prohibiting any action under the authority of a Louisiana State constitutional amendment adopted in 1966 on the ground that the wording of the ballot misled the voters. The amendment, Act 555 of the 1966 Louisiana Legislature, to Article VI, Section 22 (g) (4) of the Louisiana Constitution, was submitted to the people for vote after publication of its entire text in a newspaper in each Parish of the State as provided by Article XXI, Section 1 of the Louisiana Constitution, which method of submission to the voters of Louisiana has been specifically and judicially approved by the Court in *Hotard v. City of New Orleans,* 213 La. 843, 35 So.2d 752, appealed dismissed 335 U. S. 803. Article XXI of the Louisiana Constitution has not been changed since *Hotard* insofar as notice of publication is concerned.

The ballot, a summary of the amendment, read as follows:

> "For or Against:"
>
> "The proposed amendment to Article VI, Section 22 (a) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and

so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so long a time as any bonds, whatsoever are outstanding in connection with any such bridge and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority."

Appellants' suit alleged that the language at the end of each portion of the ballot with respect to reimposing tolls misled because what appeared on the ballot indicated that the bridge tolls would be reimposed *immediately* upon passage of the amendment, whereas the amendment itself did not provide for this and in actual fact the tolls have not yet been put back on the bridge. Appellants claimed that they were thus misinformed by the ballot in violation of the due process requirements of the Federal Constitution, the "Guarantee" clause of the United States Constitution, and appellants' constitutionally protected right to vote.

The Three-Judge Court was unanimous in holding that none of the appellants' constitutionally protected rights were violated in connection with the passage of the amendment. Two of the Judges collaborated in a concurring opinion on a side issue as to whether alleged violations of the "Guarantee" clause, Article IV, Section 6 of the United States Constitution are justiciable, but all three Judges were unanimous in holding on the merits that the process by which the amendment was adopted did

not violate the appellants' rights under the "Guarantee" clause or any other section of the United States Constitution.

The main opinion of the Three-Judge Court of Judge Rubin, exclusive of the background details and passing remarks as to the inartistic wording of the amendment was as follows (J.S.—Appendix A, pages 29-30):

> "The issue before us is not a proposition for grammarians. If the average voter had to decide what he was voting on from the ballot alone, he might well have read it as the plaintiffs do. But he did not have to decide from this summary. He could look at the amendment itself.
>
> The ballot, as will appear from Appendix A, was long. No one who has voted in any election at which voting machines are used can fail to know that Louisiana's voters, once they stand before a voting machine in a voting booth, are not likely to be able to study the description of each proposition on the ballot. They must come to the polls prepared in advance to vote on the amendments if they are to vote with any semblance of understanding.
>
> The requirements of both the Louisiana Constitution and the Federal Constitution were interpreted by the Louisiana Supreme Court in

Hotard v. City of New Orleans[12] to mean: 'All that is required to be printed on the ballot is sufficient information to identify the proposed amendment which the voter is voting for or against.'[13] 'Undeniably,' as the United States Supreme Court said, in *Reynolds v. Sims,*[14] 'the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.' However, a federal court must not interfere with the internal affairs of a State unless it is necessary to do so to protect those rights guaranteed every citizen by the Federal Constitution.[15] The procedure followed by Louisiana does not deprive the plaintiffs of Due Process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words.

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[12] 213 La. 843, 35 So.2d 752, 756 (1948).

[13] An appeal from *Hotard* was dismissed by the Supreme Court for want of a substantial federal question. 335 U. S. 803 (1948).

[14] 377 U. S. 533, 554 (1964).

[15] Ohio Oil Co. v. Conway, 281 U. S. 146 (1930); NAACP v. Thompson, 357 F.2d 831 (5 Cir., 1966)."

In order for the Court to appreciate fully the terms of the Amendment, we will give a brief out-

line of the background of this Constitutional proposition.

The history of this matter is that in the 1952 Legislature there were three pertinent legislative enactments, relative to bridge and ferry authorities. There was Act No. 7 of 1952 and Act No. 8 of 1952. Likewise, at the same session of the Legislature there was enacted Act No. 90 of 1952, which became, when adopted by the people, the amendment to Sub-Section (g) of Section 22 of Article VI of the Constitution of Louisiana as it existed before its amendment by Act 745 of 1954, and more recently by Act 555 of 1966, the proposed joint resolution which forms the basis of the instant law suit. Act 7 of 1952, has gone through a series of minor amendments, the first of which was Act 526 of 1958, which then became LSA-R.S. 41:1091—through 1106 as further amended by Act 413 of 1966.

Pursuant to the initial grant of powers in Act No. 7 of 1952, The Mississippi River Bridge Authority was formed by the Notarial Act of Bartholomew P. Sullivan, Jr., Notary Public for the Parish of Orleans, recorded in Mortgage Book, Orleans Parish, Book 1838, folio 359 on June 30, 1952, and duly filed with Wade O. Martin, Jr., Secretary of State, on July 2, 1952. (Subsequently, the Charter to the original Authority, comprised of members appointed by the Governor, the Council of Jefferson Parish, and the Council of New Orleans, was amended on July 29, 1965, before Claude W. Duke, Notary

Public, to increase the membership of the Authority by two additional members to come from the Parish of St. Bernard.)

After the formation of The Mississippi River Bridge Authority, an indenture and deed of trust dated November 1, 1954, was entered into, pursuant to which $65,000,000.00 of municipal-type revenue bonds were issued for the construction of the presently outstanding Greater Mississippi River Bridge (copy of which is attached to affidavit of Neville Levy, Chairman of The Mississippi River Bridge Authority, which is part of the record of this case). These bonds are secured primarily by the toll revenues of the present Mississippi River Bridge, and secondarily by the funds from Highway Fund No. 2 as provided in Section 22 (g) of Article VI of the Louisiana Constitution (Act 90 of 1952, as subsequently amended).

This bond indenture is still outstanding with approximately $47,000,000.00 of the bonds being outstanding and unpaid.

The method by which the bridge was made a toll-free facility when Governor John McKeithen became Governor is as follows:

Under authority of the case of *Smith vs. Ascension-St. James Bridge and Ferry Authority,* 241 La. 806, 131 So. 2d 902, the Louisiana Department of Highways entered into a contract with The Mississippi River

Bridge Authority whereby the revenues required to service the presently outstanding bond issue of the Bridge Authority are derived from the long-range Highway fund (copy of this agreement annexed to Neville Levy affidavit is part of the record of this case).

In the agreement between the Highway Department and The Mississippi River Bridge Authority the Highway Department furnishes necessary revenues which together with the proceeds of Highway Fund No. 2, the license plate money pledged by Article 6, Section 22 (g), as are needed as is required to meet the maintenance and operating budget of The Mississippi River Bridge Authority and its Debt Service Fund requirements plus a factor in excess thereof as stipulated by the Bond Indenture.

On December 6, 1962, the Attorney General of the State of Louisiana issued an opinion to the effect that under Article VI, Section 22 (g) (4) as originally enacted, when presently outstanding bonds issued in connection with the construction of the present Mississippi River Bridge are liquidated or paid, the dedication of the 50 per cent surplus in Highway Fund No. 2 will cease and the 50 per cent surplus will then be transferred to the General Highway Fund.

Therefore, when the traffic on the present bridge reached the great level it has enjoyed for the last few years a level equivalent to the projected crossings anticipated at the time of its building for the

year 1984, The Mississippi River Bridge Authority sought the enactment of Act 555 of 1966, in order to provide that they could have as additional security for proposed revenue bonds to finance additional bridges across The Mississippi River, a continuation of 50 per cent of the surplus in Highway Fund No. 2 beyond the time when the presently outstanding bonds of the Authority are liquidated, or refunded.

ARGUMENT.

Appellants' contentions were thoroughly considered by the Three-Judge District Court and the Judges unanimously agreed that the constitutional rights of the plaintiffs had not been violated. The decision is correct and should be affirmed.

The District Court reviewed the constitutional amendment itself, the ballot as reprinted above and after extensive hearing and submission of written memorandums, held that the constitutional rights of the plaintiffs had not been violated. The Court found that the ballot was not misleading and that it adequately identified and summarized the proposed amendment.

1. The text of the amendment itself is reprinted herein so that the Court may see that the language is sufficient to convey the meaning of its provisions. Emphasis is supplied only to highlight the pertinent passages:

"Proposing an amendment to Article VI, Section 22 (g) (4) of the Constitution of Louisiana, relative to the General Highway Fund and Mississippi River crossings, expressways, and drainage; and the dedication of such funds so as to provide for a dedication of $100,000.00 per year to the police jury of the parish of Tangipahoa and for a dedication of $150,000.00 per year to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to: extend the dedication of that portion payable to authorities created under authority of Act No. 7 adopted at the regular session of the Legislature for the year 1952 and amendments and supplementary laws thereto in connection with the construction or acquisition of a toll bridge and any ferries to be operated as part of the system of river crossings across the Mississippi River at or near New Orleans and so as to extend the period during which fifty per cent (50%) of the surplus monies remaining in State Highway Fund No. 2 shall be payable to the aforesaid bridge and ferry authorities for as long as the authorities have any bonds whatsoever outstanding in connection with any bridge, bridges or other facilities within its jurisdiction, subject to requirements herein provided.

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be sub-

mitted to the electors of the State of Louisiana for their approval or rejection, in the manner provided by law, a proposal to amend Article VI, Section 22 (g) (4) so that it shall read as follows:

Section 22 (g) (4)—*Commencing on June 30, 1967 and on June 30th of each year thereafter, fifty per cent (50%) of the surplus monies remaining in State Highway Fund No. 2, after all payments hereinabove required shall have been made, shall be paid by the State Treasurer* (a) Subject to the rights of the holders of any bonds presently outstanding issued pursuant to subparagraph 4 of Article VI, Section 22 (g) of this Constitution, but not including the refunding of any such bonds, there shall *first be paid to the police jury of the parish of Tangipahoa,* commencing on June 30, 1967 (or as soon thereafter as payment can be made without impairing any existing contractual obligations), and on June 30th of each year thereafter, *the sum of One Hundred Thousand Dollars ($100,000.00),* which monies shall be used by said police jury for parish purposes at the discretion of the police jury, and *secondly,* there shall be paid *to the St. Charles-St. John the Baptist Bridge and Ferry Authority,* commencing on June 30, 1967, (or as soon thereafter as payment can be made without impairing any existing contractual obligations), and *on June 30th of each year thereafter, the sum of One Hundred Fifty Thousand Dollars ($150,000.00),* which monies shall be used by such bridge and ferry authority exclusively for the

purpose of defraying costs of detailed engineering plans and specifications, the obtaining, gathering and compiling of all data necessary thereto, payment of the initial cost of acquisition, by purchase or by construction, of bridges or ferries, or to operate, maintain and improve the same, or as security for the payment of the principal of and interest on bonds, and the amounts necessary to make payments into sinking funds, reserve funds and other funds required to be established and maintained by said bridge and ferry authority to comply with any contract made with the holders of its bonds, including refunding bonds, to be issued by said bridge and ferry authority, as said authority may determine; provided that the foregoing $100,000.00 annual payment to the governing authority of the parish of Tangipahoa and the foregoing $150,000.00 annual payment to the St. Charles-St. John the Baptist Bridge and Ferry Authority shall in no event become due and payable unless and until presently outstanding bonds of the Mississippi River Bridge Authority are paid or refunded in full in principal and interest in order for the building of an additional Bridge or Bridges within the Jurisdiction of the Mississippi River Bridge Authority for which financing the imposition or re-imposition of tolls is required. So long as any revenue bonds whatsoever, including refunding bonds, issued by the St. Charles-St. John the Baptist Bridge and Ferry Authority are outstanding the provisions of this Sub-section 22 (g)

(4) (a), Article VI of this Constitution shall be irrevocable and shall be and constitute a valid and binding contract between the holders of any such bonds, the St. Charles-St. John the Baptist Bridge and Ferry Authority, *and then annually to the bridge and ferry authority created under authority of Act 7 adopted at the regular session of the Legislature for the year 1952 and amendments and supplementary* laws thereto in *connection with the construction or acquisition of* toll bridges and *any ferries intended to be operated as part of the system of river crossings across the Mississippi River at or near New Orleans under the authority of such legislation,* and *shall be used exclusively by such bridge and ferry authority to supplement the revenues thereof,* for the *purpose of paying the principal* of and interest on bonds issued by such bridge and ferry authority and the amounts necessary to make payments into sinking funds, reserve funds, and other funds required to be established and maintained by said bridge and ferry authority to comply with any contract made with the holders of its bonds. *The revenues dedicated to State Highway Fund No. 2 and payable to Mississippi River Bridge Authority* by this paragraph (4) (b) shall *continue to be dedicated and applied* as directed as long as any bonds of such authority whatsoever including refunding bonds are outstanding in connection with any bridges including the present bridge and any future bridge or other facilities within its jurisdiction, and after said

bonds have been fully paid in principal and interest further payments to said bridge and ferry authority *shall cease and the said fifty per cent (50%) of* the surplus *monies remaining in State Highway Fund No. 2 shall be transferred to the General Highway Fund.*

Any toll bridges constructed or acquired or to be constructed or acquired by such bridge and ferry authority, and any ferry or ferries acquired or to be acquired by such authority and intended to be operated as a part of such river crossings, are hereby declared to be a part of the State Highway System, and the State Department of Highways or its successor is authorized to enter into contracts with such authority for the operation and maintenance of such bridges and ferry or ferries and to construct approaches and connecting highways to connect such river crossings with the State Highway System.

On or after the 1st day of January, 1955, the Legislature shall not alter the method of appointment of members of the board of any bridge or ferry authorities organized under the provisions of Act 7 of 1952 which are already in existence on that date without the consent and approval of the governing bodies of the parishes which have participated in the organization of such bridge or ferry authorities.

Section 2. This amendment shall be predicated upon receiving a combined majority of the

votes cast upon the question of its adoption in the parishes of Orleans, Jefferson, St. John the Baptist, St. Charles, Tangipahoa, and St. Tammany, in addition to receiving a majority vote state wide.

Section 3. Nothing herein contained shall affect in any manner the monies in Highway Fund No. 2 allocated and dedicated to the Parishes of Jefferson and St. Tammany under the provisions of Article VI, Section 22 (g) (5) of this Constitution.

Section 4. This proposed amendment shall be submitted to the electors of the State of Louisiana at the next election for Representatives in Congress to be held in Louisiana on the first Tuesday next following the first Monday of November, 1966.

Section 5. On the official ballot to be used at said election there shall be printed:

FOR the proposed amendment to Article VI, Section 22 (g) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa; and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so

long a time as any bonds whatsoever are outstanding in connection with any such bridge and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority.

and also:

AGAINST the proposed amendment to Article VI, Section 22 (g) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so long a time as any bonds whatsoever are outstanding in connection with any such bridge and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority." (Emphasis supplied.)

The opportunity was available to the voters to study the entire text of this amendment as officially published in the newspapers of all parishes in the State prior to election. As is evident from the reprint of the amendment herein, and as the Court below necessarily found to reach the Court's unanimous conclusion and decision, the meaning and intent of the amendment is clear from its language.

2. The ballot clarified and correctly summarized the necessarily complex amendment, including with respect to when tolls would be reimposed. The amendment contemplated the reimposing of tolls in connection with the financing of new bridges, with no specific time for such reimposition indicated, but only at such time as the use of the amendment became necessary to continue obtaining Highway Fund No. 2 money for financing new bridges:

Act 555, the joint resolution proposing an amendment to Article 4, Section 22 (g) (4) did not repeal either expressly or impliedly the previously existing Article 6, Section 22 (g) (4).

It will be noted from the certified copy of such bill from Wade O. Martin, Jr., forming a part of the record, that the title to the bill does not state a repeal of the same or to reenact the same, but merely to *amend* the same. The customary section used when a repeal rather than an amendment is intended, which reads: "All laws or parts of law in conflict herewith be and the same are hereby repealed" is conspicuously ABSENT in Act 555.

Under Louisiana jurisprudence, a statute is not repealed in absence of clear legislative intent to do so. *State vs. Jones,* 220 La. 381, 56 So. 2d. 724; *State vs. Randall,* 219 La. 578, 53 So. 2d 689; *Mouledoux vs. Maestri,* 197 La. 525, 2 So. 2d 11; *James vs. Orange Savings and Loan Association,* 195 So. 2d 183. Certainly there was no intent to repeal in the case of Act

555 of 1966, and the preliminary language states only "to amend". *Guillotte vs. City of New Orleans*, 12 La. Ann. 432 (While the *Guillotte* case was governed by the Louisiana Constitution of 1852, the specific provisions of that Constitution, Articles 115 and 116, referred to by the Court, are contained in the present Louisiana Constitution of 1921, in Article 111, Sections 16 and 17 thereof; so that the holding of the *Guillotte* case is still valid and "good law.")

Significantly, Act 555, contains language which clearly indicates that it was the Legislative intent to protect the rights of the holders of presently outstanding bonds issued pursuant to Article 6, Section 22 (g) (4), of the Louisiana Constitution as originally existing prior to 1966. This was essential in the drafting of the legislation because of the fact that the rights of such bond holders were secured by the provisions of the Federal Constitution, namely Article I, Section 10 thereof, prohibiting states from passing laws impairing the obligations of contracts, and Amendment XIV thereof to the effect that no State shall make or enforce any law which shall deprive any person of property without due process of law. Therefore, any amendment to this section of the Louisiana Constitution had to take into account the fact that there was a prior existing section of the Louisiana Constitution, namely, Article 6, Section 22 (g) (4) as originally enacted, pledging the surplus of 50 per cent of Highway Fund No. 2 to the presently outstanding bonds of The Mississippi River Bridge

Authority in the amount of $47,000,000.00, and a bond indenture contract vesting rights in the bond holders.

Bear in mind that Section 22 (g) (4) as originally enacted provided that from such 50 per cent surplus there was first to be deducted, pursuant to Section 1 of sub-section D, the sum of $50,000.00 for the governing authority of the Parish of St. Charles and a like sum of $50,000.00 for the governing authority of the Parish of St. John. Under the present supplement, if you will, to Article 6, Section 22 (g) (4), Act 555 of 1966, it is to be noted that payments in the amount of $100,000.00 per year for the Parish of Tangipahoa have been added and the amounts payable to the Parishes of St. Charles and St. John the Baptist have been increased to $150,000.00, payable annually to the St. Charles-St. John the Baptist Bridge and Ferry Authority. This is an additional burden on the 50 per cent surplus of Highway Fund No. 2, above that which existed at the time that the Indenture was entered into under which $47,000,000.00 of bonds of The Mississippi River Bridge Authority are still outstanding.

That is why the provisions of Act 555 of 1966, are so clear that all of the rights of any bond holders that existed before its enactment are to be preserved under the Louisiana Constitution provision, Article 6, Section 22 (g) (4) as it existed prior to the enactment of Act 555 of 1966.

We cite the Court particularly to the language on Page 2:

> ". . .provided that the foregoing $100,000.00 annual payment to the governing authority of the parish of Tangiphahoa and the foregoing $150,-000.00 annual payment to the St. Charles-St. John the Baptist Bridge and Ferry Authority shall in no event become due and payable unless and until presently outstanding bonds of The Mississippi River Bridge Authority are paid or refunded in full and in principal and interest in order *for the building of an additional Bridge or Bridges within the Jurisdiction of The Mississippi River Bridge Authority for which financing the imposition or reimposition of tolls is required*". (Emphasis ours.)

The emphasis of those words and the understanding of the background for this matter and a reading of the Act as a whole makes it clear that the wording that appeared on the ballot at the time of the submission of this matter to the voters in the November election of 1962, in fact informed the voters of just what they were voting for, as opposed to mis-informing them. What the wording did was let the users of the bridge know that if they voted for this constitutional amendment so as to provide for the financing of additional bridges by the extension of the availability of the 50 per cent surplus of Highway Fund No. 2 to the Bridge Authority for the bonding of such additional bridges, that in so doing it was contemplated that such new

bridges would require financing, "for which financing the imposition or reimposition of tolls is required".

Thus, the money that the Bridge Authority is now obtaining to supplement the revenues from the Louisiana Highway Department in lieu of tolls in order to meet their bonded indebtedness as incurred in the 1954 indenture and deed of trust is not under Act 555 of 1966, but is being received under the original provisions of Article 6, Section 22 (g) (4). It is only when we either pay our presently outstanding bond issue in full, or refund the same by a supplemental issue whereby the original terms of Article 6, Section 22 (g) (4) as enacted in Act 90 of 1952, would have expired by their own terms by the extinguishment of the original bond issue, that the provisions of Act 555 of 1966, will be used by the Authority to draw money from Highway Fund No. 2 as a supplement to its toll revenues. The terms of Act 555 of 1966, will at that time require an imposing of tolls on the present existing facility as well as the new facilities to be constructed, as stated on the ballot when submitted to the people.

The voting public was specifically informed of this in a straight-forward fashion by what appeared on the ballot.

For the appellants' arguments to have merit, they must insert the word "immediate" into the ballot. Thus confusion between the ballot and the amendment arises only when that word "immediate" is added so as to imply that the tolls were to be reinstated immediately

after the passage of the amendment. It is obvious on the face of the ballot that no reference is made therein to immediate imposition of tolls.

The test of whether the ballot is or is not misleading must necessarily be the interpretation that a reasonable person would give to the language. In any election there are individuals who for one reason or another will misunderstand what they are voting on, but certainly the most that can be expected in drafting a ballot is that the language will be such as not to mislead the average reasonable person. Otherwise the question of whether this ballot was misleading would have to be decided by a public opinion poll.

3. This constitutional amendment was submitted to the people of Louisiana in conformity with Article XXI, Section 1 of the Louisiana Constitution which requires that the resolution be published in one newspaper in each Parish of the State, twice during the period not less than 30 nor more than 60 days prior to the date of the general election, which in this case was November 8, 1966. The Louisiana Supreme Court in *Hotard vs. City of New Orleans,* 213 La. 843, 35 So.2d 752 considered the Louisiana procedure for submitting State constitutional amendments to the people in the light of Louisiana and Federal Constitution requirements and held that the newspaper publication is the official notice to the people and adequately satisfies the requirements of due process. The Court further held that the ballot's function is only to identify the proposed amendment for the voter. An appeal in the *Hotard*

case was dismissed by the United States Supreme Court in a per curiam decision for want of a substantial Federal question. 335 U.S. 803. Thus the highest Courts of both Louisiana and the United States have upheld the constitutionality of this procedure for submitting amendments to the people of Louisiana. As Judge Rubin stated in his opinion in the present case (J.S., Appendix A, page 30):

> "The procedure followed by Louisiana does not deprive the plaintiffs of Due Process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words."

4. The three-Judges of the District Court were unanimous in their opinion that on the merits the State action with respect to this amendment did not invade the appellants' rights under the "Guarantee" clause, for the same reasons as were given with respect to due process.

5. Likewise, with respect to the right to vote, no one has been deprived of his vote in this instance. The people were given adequate opportunity by publication to study the amendment itself and also had the benefit of a concise summary of that amendment in the ballot, so that they were adequately informed as to what they were voting for. Appellants' confusion with respect to this amendment could result only from adding the word

"immediate" to the ballot language respecting reimposition of tolls, and that word is clearly not in the ballot. Certainly there can be no question in this case of an impairment of the right to vote no matter how broad a meaning is given to that right.

For the foregoing reasons, it is respectfully urged that Rule 16 (1) (e) of the rules of this Court applies and the judgment of the District Court should be affirmed because it is manifest that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

Respectfully,

.....
DOROTHY WOLBRETTE and

.....
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Individually and as
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CERTIFICATE.

PARISH OF ORLEANS
STATE OF LOUISIANA

BEFORE ME, the undersigned authority, personally came and appeared LOUIS B. PORTERIE, who, after being duly sworn, did depose and state that:

He is counsel of record for defendants in this matter and he has served a copy of this Motion on Donald V. Organ, counsel of record for plaintiffs-appellants by depositing a copy of same in the United States mail, first class postage prepaid, addressed to said counsel at his post office address 219 Carondelet Street, New Orleans, Louisiana 70130, all in compliance with Rule 33, paragraphs 1 and 3 (c) of the Rules of the Supreme Court of the United States.

.....
LOUIS B. PORTERIE.

SWORN TO AND SUBSCRIBED

BEFORE ME, NOTARY, THIS
..... DAY OF ....., 1969.

.....
Notary Public.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

KOHLER ET AL. *v.* TUGWELL ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 933. Decided February 24, 1969.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.